CALIFORNIA EMPLOYMENT LAW UPDATE FOR 2025

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US Labor, Employment, and Workplace Safety Alert

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In the October edition of The Essentials, we summarize key provisions of California employment laws that took effect in 2024 and those that will take effect in 2025. Where our team previously published alerts on a particular law, we link those alerts below.

AB-594: STATE PROSECUTION FOR CALIFORNIA LABOR CODE (LABOR CODE) VIOLATIONS

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AB-1228: FAST FOOD ACT UPDATE

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AB-2011: EXPANSION OF THE EXISTING SMALL-EMPLOYER FAMILY LEAVE MEDIATION PROGRAM

California Government Code (Government Code) section 12945.21 created a small-employer family leave mediation pilot program for the resolution of alleged violations of family care as well as medical and bereavement leave. The program requires the California Civil Rights Department (CRD) to initiate the mediation within 60 days following a request, prohibits an employee from pursuing a civil action, and tolls the statute of limitations (including for all related claims not subject to mediation) from the date of receipt of the request to participate in the program until the mediation is complete or the mediation is deemed unsuccessful. AB-2011 expands the program to include allegations regarding reproductive loss leave and extends the program indefinitely. The pilot program is scheduled to expire on 1 January 2025.

AB-2288: PRIVATE ATTORNEYS GENERAL ACT (PAGA) AMENDMENTS

UPDATE: California Legislature Amends PAGA Statute through Assembly Bill 2288 and Senate Bill 92 | HUB | K&L Gates (klgates.com)

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AB-2299: POSTING REQUIREMENTS OF THE CALIFORNIA LABOR COMMISSIONER'S (LABOR COMMISSIONER) ANTICIPATED MODEL LIST OF EMPLOYEES' RIGHTS AND RESPONSIBILITIES

Under this law, the Labor Commissioner is required to develop a model list of employees' rights and responsibilities under California's existing whistleblower laws. Once developed, this list will be accessible on the Labor Commissioner's website. To comply with this law, employers are required to prominently display a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline outlined in California Code, Labor Code section 1102.7. The posting should be in a common area where employees can easily review it and should be in “lettering larger than size 14-point” type, for ease of reading. This law will take effect on 1 January 2025.

SB-92: PAGA AMENDMENTS

UPDATE: California Legislature Amends PAGA Statute through Assembly Bill 2288 and Senate Bill 92 | HUB | K&L Gates (klgates.com)

SB-428: HARASSMENT RESTRAINING ORDERS

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SB-497: THE EQUAL PAY AND ANTI-RETALIATION ACT: A REBUTTABLE PRESUMPTION OF RETALIATION

Under Labor Code section 1102.5, employers are prohibited from retaliating against employees who disclose information that the employee has reasonable cause to believe concerns a violation of state or federal law, regardless of whether disclosing the information is part of the employee's job duties. In addition, employers may not retaliate against an employee for refusing to participate in an activity that would result in a violation of law. Similarly, under Labor Code section 1197.5, employees are protected against retaliation for reporting violations of California's Equal Pay Act, which prohibits differential pay based on sex, race, or ethnicity for substantially similar work, unless an employer can prove that such pay was based on nondiscriminatory factors. Current law also protects employees from retaliation for disclosing the employee's own wages or the wages of coworkers.

To prevail on such a claim, the employee bears the burden to establish, by a preponderance of the evidence, that retaliation was a contributing factor in a challenged employment action. Where this showing is made, the burden of proof shifts to the employer to demonstrate, by clear and convincing evidence, that it would have taken the action in question for legitimate, independent reasons even if the employee had not engaged in protected activity.

Now, with the adoption of SB-497, the Equal Pay and Anti-Retaliation Protection Act, a rebuttable presumption was created in favor of the employee's retaliation claim if an employer engages in the alleged retaliatory action within 90 days of the employee's alleged protected activity. It also added to existing remedies a civil penalty of up to US$10,000 for each violation. This law became effective on 1 January 2024.

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While employers have long been aware of the enhanced risk of taking adverse actions—such as discipline, demotion, or termination—close in time to protected activity, this new law heightens that risk. Employers should carefully consider timing issues when considering an adverse employment action following protected activity, particularly during the 90-day window, in which such actions will now be presumptively retaliatory.

SB-525: US$25 PER HOUR MINIMUM WAGE FOR COVERED HEALTH CARE WORKERS

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SB-553: MANDATORY WORKPLACE VIOLENCE-PREVENTION PROGRAMS

Under California's existing requirements for employers, all employers were required to implement a written workplace violence prevention program by 1 July 2024. The law expressly exempts several categories of workplaces, such as health care facilities—which have their own unique workplace violence prevention plan requirements—and places of employment where fewer than 10 employees work at a given time and there is not access to the general public. Employers must maintain a log of any violent incidents that occur in the workplace, conduct trainings for their employees regarding preventing workplace violence, and keep records of workplace violence hazards the employer has identified and corrected.

Beginning 1 January 2025, SB-553 authorizes a collective bargaining representative of an employee, to seek a temporary restraining order against the alleged aggressor and an order after a hearing on behalf of the employee and other employees at the workplace, under the guidelines prescribed. Before the petition is filed, collective bargaining representatives must, among other things, provide affected employees with advance notice and opportunity to decline to be named in the order.

SB-616: EXPANDED PAID SICK LEAVE LAW

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SB-700: PROHIBITION AGAINST INQUIRING ABOUT PRIOR MARIJUANA USE

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SB-723: RIGHT OF RECALL EXTENDED FOR COVERED HOSPITALITY AND BUSINESS SERVICES EMPLOYEES

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AB-224: EXTENSION OF EXISTING EXEMPTION FOR NEWSPAPER DISTRIBUTORS

Under existing law, first established under *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018), and as outlined by the ABC test, a person providing labor or services for remuneration is considered to be an employee, rather than an independent contractor, unless the hiring entity demonstrates that the person is: (A) free from the control and direction of the hiring entity in connection with the performance of the work; (B) performs work that is outside the usual course of the hiring entity's business; and (C) is customarily engaged in an independently established trade, occupation, or business. There are multiple occupations and business relationships exempt from this standard.

AB-224 extends the existing exemption for newspaper distributors working under contract with a newspaper publisher and newspaper carriers through 1 January 2030.

During the extension provided by AB-224, the traditional multifactor test for independent contractor status—the "Borello test"—which is more relaxed than the ABC test, will continue to apply to newspaper distributors and carriers. The bill also requires every newspaper publisher or distributor that hires or directly contracts with newspaper carriers to submit prescribed information on carrier payroll taxes, wage rates, and wage claims to the Labor and Workforce Development Agency (LWDA). AB-224 requires this information to be reported to the LWDA on or before 1 March 2025, 1 March 2026, 1 March 2027, 1 March 2028, and 1 March 2029.

AB-1034: SOME CONSTRUCTION INDUSTRY WORKERS EXEMPTED FROM PRIVATE ATTORNEYS GENERAL ACT (PAGA)

Presently, construction industry workers governed by a collective bargaining agreement effective before 1 January 2025, are exempt from PAGA under Labor Code section 2699.6 where the collective bargaining agreement provides for the wages, hours of work, and working conditions; premium wage rates for overtime hours worked; and a regular hourly rate of pay of at least 30% more than the state minimum wage. Labor Code section 2699.6 expires on 1 January 2028.

AB-1034 law removes the 1 January 2025 date above and extends the expiration date of the exemption to 1 January 2038. As a result, employees in the construction industry working under a qualifying collective bargaining agreement—regardless of its effective date—are exempt from PAGA through 1 January 2038.

AB-2123: ACCESSING CALIFORNIA'S PAID FAMILY LEAVE PROGRAM (PFL)

Under California's existing PFL, eligible employees are provided time off to care for a seriously ill family member, as defined by the statute, bond with a new child, or participate in a qualifying family member's military event. Under existing law, employers could require eligible employees to exhaust up to two weeks of accrued vacation before accessing PFL benefits.

Effective 1 January 2025, employers will no longer be able to require employees to first take two weeks of accrued vacation before receiving PFL benefits.

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AB-2499: ADDITIONAL PROTECTIONS FOR VICTIMS WHO SUFFER QUALIFYING ACTS OF VIOLENCE

Under existing law, employers with 25 or more employees are prohibited from discharging or discriminating or retaliating against an employee who is a victim for taking time off from work to seek medical attention for injuries sustained by crime or abuse, secure services related to an experience of crime or abuse, or engage in safety planning action to prevent future crime or abuse.

AB-2499 would broaden the definition of "victims" to now include those who suffered a "qualifying act of violence," which may include, but is not limited to, domestic violence, sexual assault, stalking, and a patterned act of using force or making reasonably perceived or actual threats of force against another to cause physical injury or death. This new law also removes the minimum threshold of 25 or more employees from the provisions and now applies to all employers with at least one employee, except as specified. The existing jury, court, and victim time-off provisions will move from the Labor Code (former Labor Code sections 230 and 230.1) as unlawful employment practices within the California Fair Employment and Housing Act of 1959 (FEHA) (Government Code section 12945.8) to the enforcement authority of the CRD. The law also includes a posting requirement and requires the CRD to develop and post, on or before 1 July 2025, a form, as prescribed that an employer may use to comply with that requirement.

AB-2738: ENFORCEMENT OF SAFE WORKING CONDITIONS FOR ENTERTAINMENT VENDOR WORKERS

In 2022, Governor Gavin Newsom signed into law AB-1775, which set industry-wide health and safety training standards for live events at publicly owned and operated venues. AB-2738 seeks to further protect stage production and live-event workers by increasing the transparency of contract agreements between entertainment vendors and public venues to ensure enforcement of existing safety requirements and to verify that stage crews being hired are properly trained.

AB-2738 mandates that contracts with entertainment events vendors include a written agreement stating that, upon hiring for a live event, the vendor must provide information about the federal and California Occupational Safety and Health Act of 1973 (Cal/OSHA) training completed by their employees and the employees of their subcontractors.

AB-2738 also authorizes public prosecutors to enforce Labor Code violations and recover all remedies available under the Labor Code, directing any recovered amounts to workers first for unpaid wages, damages, or penalties, and any excess to the state general fund. A prevailing plaintiff would also be authorized to recover lawyer's fees and costs in a private cause of action.

AB-3234: POSTING REQUIREMENT FOR VOLUNTARY SOCIAL COMPLIANCE AUDIT

Under AB-3234, if an employer subjects itself to a "social compliance audit" (whether conducted in part or in whole) to determine if child labor is involved in the employer's operations or practices, the employer must post on

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its website, “a clear and conspicuous link” to the report detailing the findings of its compliance with child labor laws.

A “social compliance audit” is defined as a voluntary, nongovernmental inspection or review of an employer's operations or practices intended to evaluate compliance with state and federal labor laws, including wage and hour regulations, health and safety regulations, and child labor laws. The bill requires the employer's posted report to include, among other things, a determination of whether the employer did or did not engage in, or support the use of, child labor. The report must also include a copy of any written policies and procedures the employer had or maintains regarding child employees.

SB-399: CALIFORNIA WORKER FREEDOM FROM EMPLOYER INTIMIDATION ACT—CAPTIVE AUDIENCE MEETINGS

This new law creates Labor Code section 1137, which is also known as the “California Worker Freedom from Employer Intimidation Act.” An employer cannot threaten or subject an employee to discharge, discrimination, retaliation, or any other adverse action because the employee declines to attend or participate in an employer-sponsored meeting where the purpose of that is to communicate the employer's opinion about religious or political matters. An employee who is working at the time of the meeting and elects not to attend must continue to be paid while the meeting is held.

An employer who violates this section will be subject to a civil penalty of US$500 per employee for each violation. This law can be enforced by both the Labor Commissioner and individual employees. Notably, the law does not apply to qualifying religious entities (i.e., those exempt from Title VII of the Civil Rights Act of 1964); a political organization or party; an educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the regular coursework; a nonprofit, tax-exempt training program requiring a student or instructor to perform community service hours on political or religious matters as it relates to the mission of the training program; an employer requiring employees to undergo training to comply with the employer's legal obligations; and a public employer holding a new-employee orientation.

SB-988: FREELANCE WORKER PROTECTION ACT

Beginning 1 January 2025, SB-988 mandates certain requirements in contracts between hiring entities and freelance workers (independent contractors). Hiring entities must pay the independent contractor the agreed-upon compensation on or before the agreed-upon date specified in the contract or, if not specified, no later than 30 days after completion of the independent contractor's services. This new law also requires that the contract be in writing and the hiring entity retain a copy of the contract for no less than four years. Further, SB-988 prohibits an employer from discriminating or taking any adverse action against an independent contractor for taking certain actions relating to enforcement of the provisions of SB-988 and creates a private right of action for enforcement of SB-988, entitling a prevailing plaintiff to lawyer's fees and costs, injunctive relief, and any other remedies deemed appropriate by a court.

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SB-1100: PROHIBITION AGAINST DRIVER'S LICENSE DISCRIMINATION

Effective 1 January 2025, FEHA will prohibit employers from including as a requirement, a statement in a job posting, application, advertisement, or related material that an applicant must have a driver's license unless: (A) the employer reasonably expects that driving will be an essential function of the job; and (B) the employer reasonably believes that meeting that job function cannot be achieved through alternative means of transportation comparable in time or cost to the employer.

SB-1137: CALIFORNIA'S ADOPTION OF INTERSECTIONALITY IN ANTI-DISCRIMINATION PROTECTIONS

Beginning 1 January 2025, California will be the first state to expressly recognize and adopt the phrase “intersectionality” in anti-discrimination laws. Under the FEHA, among other statutory protections, employers are prohibited from subjecting workers to discrimination and harassment based on enumerated protected characteristics (e.g., race, age, disability, sex, religion, etc.). This new law will expand the list of protected categories to include a prohibition against discrimination and harassment based on intersectional identities, defined as a combination or intersection of two or more of the established protected characteristics.

SB-1350: EXPANSION OF “EMPLOYMENT” TO INCLUDE SOME HOUSEHOLD DOMESTIC SERVICE WORKERS

Relying on Cal/OSHA, the Division of Occupational Safety and Health (DOSH) presently exercises power, jurisdiction, and supervision over employment conditions necessary to implement and enforce all occupational health and safety measures. In qualifying situations, a violation of Cal/OSHA can be deemed a crime. However, the current definition of “employment” excludes household domestic service.

Beginning 1 July 2025, SB-1350 expands the definition of “employment” to include household domestic service performed on a permanent and temporary basis, with several exclusions for specified household domestic service, including, among others, those where an individual who, in their own residence, privately employs persons to perform ordinary domestic household tasks, including housecleaning, cooking, and caregiving. By expanding the definition of “employment,” DOSH may now apply criminal penalties under Cal/OSHA to household domestic service employers.

Our lawyers invite employers to contact our team below for further information about compliance with and, where appropriate, implementation of these California employment laws. We look forward to serving you and your team.

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